

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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DATE: NOVEMBER 8, 2004

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #6: Consideration of Request for Override of Commission Policy Related to Deferral of Applications for Projects Pending Settlement of Litigation

REQUESTED BY:

City of Rancho Cucamonga

RECOMMENDATION:

The staff recommends that the Commission uphold its policy that Commission consideration will await conclusion of the environmental litigation currently filed against the City of Rancho Cucamonga applications identified as: LAFCO 2965 (Etiwanda Creek), LAFCO 2967 (Richland Pinehurst) and LAFCO 2970 (Tracy).

However, if the Commission determines to waive the policy to await the outcome of the environmental litigation for these three applications, the staff recommends that the Commission modify the proposal applications to consolidate them into a single reorganization proposal to be known as LAFCO 2965A for further processing.

BACKGROUND INFORMATION:

The Commission has received three applications for annexation to the City of Rancho Cucamonga. In each case, LAFCO staff has modified its processing to include the annexation of the territory to the West Valley Mosquito and Vector Control District pursuant to Commission policy related to concurrent annexations. The applications currently being processed are identified as:

LAFCO 2965 – Reorganization to include Annexations to City of Rancho Cucamonga and West Valley Mosquito and Vector Control District (Etiwanda Creek – DRC 2003-00164) – filed by City with LAFCO on July 21, 2004

LAFCO 2967 – Reorganization to include Annexations to City of Rancho Cucamonga and West Valley Mosquito and Vector Control District (Richland Pinehurst – DRC 2002-00865) – filed by City with LAFCO on August 5, 2004

LAFCO 2970 – Reorganization to include Annexations to City of Rancho Cucamonga and West Valley Mosquito and Vector Control District (Tracy Development – DRC 2003-01051) – filed by City with LAFCO on August 30, 2004

In each case, LAFCO staff has processed the applications, notified interested parties, and circulated the applications for comment. In each case, the Commission has been notified by Mr. Craig A. Sherman, attorney for Spirit of the Sage Council and Habitat Trust for Wildlife Inc., that he has filed litigation questioning the environmental process of these applications by the City of Rancho Cucamonga and expressing his clients' opposition to the proposals. His letters, included as Attachments #3, #4 and #5 for the respective applications to this report, request that the Commission defer processing or deny the applications based upon the questions raised.

In each case, LAFCO staff has notified the City of Rancho Cucamonga of the Commission's policy that it will await resolution of environmental litigation prior to beginning the Commission's official review of the application (copies of letters to City included as Attachment #1). The City of Rancho Cucamonga has responded that it wishes to request that the Commission waive its policy to await resolution of the litigation for the three proposals identified above (copy of letters from City included as Attachment #2). The City's correspondence includes a copy of the letter from the developers of the Richland Pinehurst project (LAFCO 2967) indicating that they concur with the City's request. No response has been received from the developers of the Tracy project (LAFCO 2970).

The Commission's policy for awaiting resolution of environmental litigation before processing applications was borne from two lawsuits challenging environmental determinations – one related to the annexation of the Chino Airport to the City of Chino and the other related to a proposal for annexation to the City of Rialto. In each case, the Commission proceeded

with the annexation process in compliance with the California Environmental Quality Act (CEQA) provisions as outlined in Sections 15231 and 15233 directing responsible agencies that, unless and until the environmental documents were determined to be deficient by a court of law, they should be considered adequate for use. In each case the applications for annexation was completed and, subsequently, the courts determined that the environmental documents were deficient and required that further environmental review be conducted.

The court determinations required that the Commission: remove the areas annexed through the filing of Certificates of Completion and the recording of new documents detaching the area from the cities and notify the affected agencies, such as the State Board of Equalization, the County Assessor, Auditor-Controller, etc., that the area needed to be returned to the County's jurisdiction and that the revenues should be returned to the prior agencies. The resulting confusion for the many elements of government which provide services, such as law enforcement, fire protection providers, the changes to the 911 dispatch systems, property tax distribution and other revenues which are apportioned, either at the State or local level, prompted the Commission to adopt the policy related to awaiting completion of the litigation process. This process has worked well for the Commission in situations such as the annexation to the City of Ontario of its sphere of influence in the Agricultural Preserve and the City of Chino Annexation known as Subarea 1 of the Agricultural Preserve.

In the present situation, staff believes that the Commission's policy should be maintained on the basis that it would reduce the potential for confusion as outlined above should the litigation be successful; therefore, staff is recommending that the request for waiver be denied.

However, it should be noted that there is precedent to waive the policy if the Commission chooses. Specifically, in January 2002, for a City of Rancho Cucamonga annexation identified as LAFCO 2879, the City requested and the Commission granted a waiver related to litigation much the same as the three proposals currently under consideration. That request from the City indicated that it wished the Commission to proceed with application on the basis that, unless and until the courts determined the environmental documents to be inadequate, CEQA requires that they be considered adequate for review by the Commission as a responsible agency. In the case of LAFCO 2879, the proposal was completed and the litigation was settled without effect on the annexation process.

If the Commission chooses to approve the request for waiver of the environmental litigation policy, the City and project proponents should be aware that if the Commission becomes involved in the litigation filed, the City would be responsible for payment of attorney costs as identified in the Commission's Legal Defense policy. That policy reads as follows:

It is the policy of this Commission that the costs for legal defense of an issue, which has been approved by the Commission, should be the primary responsibility of the agency or person seeking that approval. Therefore, as a condition of approval for any action taken by the Local Agency Formation Commission, the Commission may impose a condition within its resolution of approval that requires the applicant to defend, indemnify, hold harmless, and provide for reimbursement or assumption of all legal costs in connection with that approval.

In addition, if the Commission chooses to approve the request for waiver of the environmental litigation policy and move forward with the applications, staff would recommend that the Commission also approve the consolidation of the three proposals for annexation to the City of Rancho Cucamonga and the West Valley Mosquito and Vector Control District into a single application for processing to be known as LAFCO 2965A. The basis for the staff's recommendation is:

1. While the applications were submitted separately by the City of Rancho Cucamonga to address two specific development applications processed individually (LAFCO 2967 Richland Pinehurst and LAFCO 2970 Tracy), and to respond to LAFCO staff concerns regarding the remainder island that would be created (LAFCO 2965 identified as Etiwanda Creek, which is not a development project) they address a single peninsula of territory within the City's northern sphere of influence. An aerial map of the three applications is included as Attachment #6.
2. They have the potential to create an unincorporated island. This potential is identified as follows: LAFCO 2964, the Henderson Creek Project, is anticipated to be approved with 100% landowner consent; LAFCO 2967 and LAFCO 2970 are anticipated to be successful since they currently possess majority landowner consent; and LAFCO 2965 could be terminated due to protest. If this were to be the case, it would leave a 300 acre island of unincorporated territory totally surrounded by City boundaries. The Commission has great experience with the negative aspects that such an island would create; therefore, staff believes that the remaining three applications

should be consolidated into a single application for further review and consideration by the Commission.

3. These three applications share certain common aspects, such as all are being litigated by the Spirit of the Sage Council and Habitat Trust for Wildlife; they all abut one another as seen on the aerial map; they share the same affected agencies; and two of the three have special counsel assigned for LAFCO review.

The City of Rancho Cucamonga has not expressed an official position on the proposed modification to consolidate the proposals. In staff discussions during the review of the applications, however, the City's position has been conveyed to be that it would prefer that its applications stand on their own merits as submitted. The staff believes that the consolidation of these applications would be more efficient for the review of boundaries, service providers, environmental considerations, and financing of service delivery and would recommend that the Commission consolidate them for further processing.

KRM/

Attachments:

- 1 – LAFCO Letters dated August 31 and September 21 regarding notification of environmental litigation
- 2 – City response letters dated September 20 and October 27 requesting waiver of Commission policy
- 3 – Letter of Opposition dated August 12, 2004 from Craig Sherman on behalf of Habitat Trust for Wildlife and Spirit of the Sage Council and Environmental Litigation identified as San Bernardino Superior Court Case No. RCV 081807
- 4 – Letter of Opposition dated August 18, 2004 from Craig Sherman on behalf of Habitat Trust for Wildlife and Spirit of the Sage Council and Environmental Litigation identified as San Bernardino Superior Court Case No. RCV 081847
- 5 – Letter of Opposition dated September 20, 2004 from Craig Sherman on behalf of Habitat Trust for Wildlife and Spirit of the Sage Council and Environmental Litigation identified as San Bernardino Superior Court Case No. RCV 082430
- 6 – Aerial Map of Location of LAFCO 2964, LAFCO 2965, LAFCO 2967 and LAFCO 2970